

**From:** John Gibson  
**To:** Microsoft ATR  
**Date:** 1/27/02 3:56pm  
**Subject:** Microsoft settlement

Dear Sirs and Madames,

I am writing to express my opposition to the Proposed Final Judgment (PFJ) for the Microsoft antitrust case. Not only is the PFJ far too weak, but it has no effective enforcement mechanism to assure Microsoft follows even its weak restrictions. Moreover, Microsoft has a well-documented history of creatively exploiting loopholes and prolonging litigation in order to continue its anticompetitive and illegal business practices. These practices have substantially harmed businesses and consumers. Unless a stronger and more strongly enforced settlement is reached, we can expect further harm and more litigation.

The PFJ is too weak in too many ways to list here. Here are a few weaknesses that particularly concern me, as a independent software developer and a supporter of free or open-source software.

(1) The PFJ defines terms such as "API", "Microsoft Middleware", and "Windows Operating System Product" so narrowly that restrictions can be circumvented by changing distribution methods or product names (see <http://www.kegel.com/remedy/remedy2.html>).

(2) The PFJ allows Microsoft to continue anti-competitive practices against free and open-source software. Section III.J.2 allows Microsoft to condition disclosure of documentation and APIs to third parties on its own interpretation of the "authenticity and viability" of the third party's business. Microsoft's greatest current competitor is the Linux operating system, which is written by a loose coalition of independent software developers and owned by no single company. Microsoft would be free to determine that Linux is not a viable business and withhold technical information.

(3) It does nothing to prevent Microsoft from using artificial incompatibilities and restrictive licensing to increase the barrier to entry for third-party operating systems that attempt API-compatibility with Microsoft's operating systems.

(4) It allows Microsoft to continue to withhold information about its file formats, although undocumented file formats form an important part of the Applications Barrier to Entry (Findings of Fact paragraphs 20 and 39).

The PFJ's enforcement mechanism is also too weak. Only one of three members of the Technical Committee will be selected without Microsoft's influence. This is a absolutely shocking concession.

A company with Microsoft's long history of ruthlessly illegal and anticompetitive behavior cannot be allowed to choose the policemen who watch over it. Further, the PFJ gives the Technical Committee no enforcement powers of its own. All disputes are passed on to the courts. But as this and other lawsuits have shown, the courts act far too slowly to deter Microsoft from illegal action.

Consumers and business have suffered considerable harm through Microsoft's illegal maintenance of its monopoly. Microsoft has accumulated billions of dollars of consumers' and business's money by hundreds of dollars for software whose marginal cost is tens of dollars, and whose development cost is negligible in comparison to those billions. Consider also, that open-source software companies offer similar, even superior software free of charge. Microsoft's software is widely viewed in the open-source community as buggy, unstable, and generally inferior. Microsoft's operating systems crash far more frequently than their alternatives. Microsoft's insecure programming methods are the basis for the majority of Internet viruses. Microsoft's unpublished file formats and the subsequent difficulty of transferring files to non-Microsoft software have caused countless people countless hours of frustration. Yet consumers and businesses are locked into Microsoft's software, due to a combination of economic "network effects" and artificial barriers to entry supported by Microsoft's illegal, anticompetitive business practices.

Microsoft has a stranglehold on both the computer operating system market and the office productivity software market. It has demonstrated repeatedly that it will do anything it takes, legal or illegal, to maintain its monopoly. Consumers and businesses have been harmed, substantially. The Court and the Justice Department simply must impose broader and more strongly enforceable restrictions on Microsoft, or the harm will continue and another lengthy suit will follow.

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